

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

DEFENDANT'S POSITION REGARDING SENTENCING FACTORS

COMES NOW Defendant, Billy Ray Wyatt, through counsel, and submits the following pleading stating his position with respect to the sentencing factors in this case. The numbered paragraphs correspond to the numbered paragraphs of the pre-sentence report.

Defendant was presented a copy of the Pre-Sentence Investigation Report (“PSR”) and has reviewed the report with counsel. Defendant’s counsel has conferred with the Government, and there are no disputed issues regarding the PSR.

The Sentencing Hearing [Anticipated Length of Hearing]

Defense counsel anticipates that argument and proof to address the factors set forth in 18 U.S.C. § 3553(a) will be presented. Counsel anticipates calling up to six (6) witnesses and that the hearing will take approximately one (1) hour.

Sentencing Factors

Factual Objections.

Offense Conduct

¶¶4-21

Defendant does not dispute the allegations regarding his involvement in the instant offense.

Offense Level Computations

¶¶25-45.

Defendant does not dispute the offense level as calculated.

Criminal History

¶¶46-58.

Defendant does not dispute his criminal history.

Statutory Factors

Defendant hereby sets out factors which the Court should consider in determining what type and length of sentence is sufficient, but not greater than necessary, to comply with the statutory factors set forth in 18 U.S.C. § 3553(a). Defendant requests that the Court impose a sentence of ten (10) years, the mandatory minimum as set forth in 18 U.S.C. § 2422(b) and 18 U.S.C. § 2, with credit for time served since his arrest on June 28, 2013.

18 U.S.C. § 3553(a) Factors

1. Nature and Circumstances of Offense and the History and Characteristics of the Defendant.

a. Nature and Circumstances of the Offense.

i. Count 1 – (L.W.)

In January or February 2012, Defendant created a profile on the website “MeetMe.com”

(“MeetMe”) indicating that he was a 16 year-old bi-sexual female known as Beth Johnson. Beth Johnson (Defendant) contacted L.W., then 16 years old, on MeetMe and exchanged messages. Beth Johnson (Defendant), asked L.W. if she wanted to meet a 16 year-old boy named Billy (Defendant). L.W. gave her phone number to Beth Johnson (Defendant), Beth Johnson (Defendant) gave Billy’s (Defendant) number to L.W. Later, L.W. and Billy (Defendant) began communicating and exchanged sexual texts and phone calls. Billy (Defendant) asked L.W. if she wanted to have sex with him and have Beth Johnson join them.

In March or April 2012, Billy (Defendant) asked L.W. to meet him. L.W. agreed for Billy (Defendant) to pick her up at a park near her residence in Henry County, Tennessee. When Defendant arrived, L.W. got in his truck and realized that Billy (Defendant) was much older than 16 years old. Defendant took L.W. to his home in Hazel, Kentucky and asked L.W. to sleep on the couch with him, and he also asked her for a hug and attempted to kiss her. L.W. told Defendant that she was on her menstrual cycle and needed to be taken home.

Defendant took L.W. back to the park near her residence and no sexual contact occurred at Defendant’s home or in his truck. Defendant acknowledges that his actions were wrong and accepts full responsibility for his conduct. Defendant is sorry for any trauma he caused L.W.

ii. Count 2 – (Ellyse Smith, Undercover Officer)

Due to investigations regarding Count 1, set forth above, in February 2013 a law enforcement officer set up a profile on MeetMe as Ellyse Smith, indicating that she was a 15 year-old girl. On February 27, 2013 Carrie Williams, later identified as Defendant, contacted Smith on MeetMe asking for Smith’s phone number. Carrie William’s (Defendant) profile indicated that she was 18 years old and was looking for “open-minded bi[sexual] girls who aint

all talk.” Smith later gave her phone number to Carrie Williams (Defendant) and they exchanged text messages, including sexual text messages. Carrie Williams (Defendant) told Smith that her friend Billy could do sexual favors for her. Carrie Williams (Defendant) gave Billy’s (Defendant) phone number to Smith, and Smith and Billy (Defendant) exchanged sexually explicit text messages.

On April 3, 2013, Billy (Defendant) contacted Smith by phone. This call was recorded. Defendant and Smith discussed masturbation, and Defendant indicated that he could sexually satisfy Smith.

Defendant accepts full responsibility for his actions and knows that he was wrong.

b. History and Characteristics of the Defendant.

Personal and Family Data.

Defendant was born December 26, 1959 in Cottage Grove, Tennessee to parents who were hardworking sharecroppers. In 1964, the family left Tennessee and moved to Kentucky to work on a farm. Defendant had seven (7) siblings, but three (3) are deceased. Defendant’s father passed away in 1985 from a stroke and heart attack, and his mother died from lung cancer in 2011.

Defendant has been married three (3) times and has three (3) children, including a special needs child. Defendant has good relationships with his children and ex-wives.

Defendant has many friends and family that are supportive of him. The following individuals have written letters (attached hereto as an Exhibit) in support of him which Defendant respectfully requests this Court consider:

- Darlene Hardison (3 letters) – sister

- James Murdock – former employer
- Charlie Wyatt (2 letters) – brother
- Kathy Wyatt – sister-in-law
- Michael and Georgia Keel – neighbors
- Nicole Walker Spurlock – friend
- Daniel Smiley – friend
- Brenda Barrow – sister
- Jennifer Reed – niece
- Cindy Miles – friend

Substance Abuse.

Defendant denies any addiction to illegal narcotics or alcoholic beverages.

Physical Condition

Defendant has endured constant threats from other inmates at the Obion County Jail in Union City, Tennessee. In December 2013, while asleep, he was ambushed by two inmates and kicked in the head and beaten.

Education and Vocational Skills.

In 1977, Defendant graduated from Calloway High School in Murray, Kentucky. In 2009, he received his Commercial Driver's License (CDL) in Mayfield, Kentucky. In 2011, Defendant received a certificate for successful completion of the Tobacco Good Agricultural Practices Training presented by the University of Kentucky and the University of Tennessee. On October 9, 2013, Defendant received a Certificate of Completion for a Bible Correspondence Course from the Main Street Church of Christ. On November 27, 2013, Defendant received a diploma entitled The Voice of Prophecy Worldwide Bible Broadcasters issued at Los Angeles, California. On December 2, 2013, Defendant received a diploma entitled Tennessee Amazing Bible School issued at Bradford, Tennessee. In October 2013 and April 2014, Defendant received certificates of completion for Bible Correspondence Courses from the Green's Lake Road Church of Christ in

Chattanooga, Tennessee.

Defendant has special skills in the following areas: farming, carpentry, mechanics, electrical, and maintenance. He also stated that he can operate any type of equipment.

Employment History

Defendant has been farming since he was 18 years old. From March 1, 2010 through June 28, 2013, Defendant was employed as a truck driver for Maverick Transportation, North Little Rock, Arkansas. Defendant received Certificates of Excellence from Maverick Transportation in January 2010, July 2010, October 2010, March 2011, July 2011, October 2011, April 2012, October 2012, and April 2013. Defendant also received Safe Driving Awards from Maverick Transportation in March 2011 and March 2013.

2. Reflect the seriousness of the offense; Promote respect for the law; and Provide just punishment for the offense.

Defendant acknowledges the seriousness of his offense, and deeply regrets his actions. Defendant desires to undergo treatment and/or counseling while incarcerated.

3. Provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

A sentence of 120 months is the mandatory minimum sentence for each offense in this case per 18 U.S.C. § 2422(b) and 18 U.S.C. § 2. Pursuant to §5G1.2(c), sentences on all counts shall run concurrently if the sentence imposed on the count carrying the highest statutory maximum is adequate to achieve the total punishment, except to the extent otherwise required by law.

The guideline range pursuant to the PSR is 120 months to 135 months (PSR, ¶91).

Per the plea agreement filed June 9, 2014, the Government agreed to a sentence within the lower half of the guideline range. The lower half of the guideline range here is 120 months to 127.5 months. A concurrent sentence of 120 months is appropriate in this case, with credit for time served since Defendant's arrest on June 28, 2013.

Conclusion

Defendant respectfully submits that a concurrent sentence of 120 months, with credit for time served, would be a proper sentence in this case. Such a sentence is sufficient, but not greater than necessary, to comply with the statutory directives set forth in 18 U.S.C. § 3553(a). Defendant requests that he be recommended for participation in any counseling/therapy programs. Because Defendant was attacked in December 2013, Defendant respectfully requests that he remain in protective custody pending his placement. He finally requests that he be recommended for placement at the low-security facility in Butner, North Carolina.

Respectfully submitted this the 5th day of September, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing pleading(s) and/or documents(s) and any exhibits thereto has/have been forwarded by electronic means via the Court's electronic filing system to the following person(s):

Ms. Debra L. Ireland
Assistant U.S. Attorney
167 N. Main, 8th Floor
Memphis, TN 38103

This the 5th day of September, 2014.

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